

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAMUEL J. CALABRESE.

Plaintiff,

V.

NORTHWEST TRUSTEE SERVICES, INC., et al.,

Defendants.

CASE NO. C10-1346JLR

ORDER DENYING MOTION
FOR TEMPORARY
RESTRAINING ORDER

This matter comes before the court on the motion for a temporary restraining order filed by Plaintiff Samuel J. Calabrese (Dkt. # 2). Mr. Calabrese, who is proceeding pro se, asks the court to enjoin the August 27, 2010 trustee's sale of his property in Newcastle, Washington. Having reviewed Mr. Calabrese's motion and its accompanying exhibits, the court DENIES Mr. Calabrese's motion for a temporary restraining order (Dkt. # 2).

ORDER- 1

I. BACKGROUND

2 In June 2008, Mr. Calabrese obtained a home mortgage loan from Defendant
3 Pierce Commercial Bank (“Pierce”). On June 23, 2008, Mr. Calabrese executed a Deed
4 of Trust which designated Mr. Calabrese as Borrower and Grantor; Defendant Ticor Title
5 Company (“Ticor”) as Trustee; Defendant Mortgage Electronic Registration Systems,
6 Inc. (“MERS”) as Beneficiary “solely as nominee for Lender, as hereinafter defined, and
7 Lender’s successors and assigns”; and Pierce as Lender. (Mot. (Dkt. # 2) Ex. 1 (“Deed of
8 Trust”) at 1.) The Deed of Trust was recorded on June 30, 2008. (*Id.* at 1.)

9 On October 7, 2009, MERS executed an Assignment of Deed of Trust to
10 Defendant Wells Fargo Bank, NA (“Wells Fargo”), which was recorded on October 9,
11 2009. (Mot. Ex. 4 (“Assignment”) at 1.) Mr. Calabrese states that he did not receive
12 notice of the Assignment. (Mot. at 3.)

13 Mr. Calabrese was given written notice of default on March 18, 2010. (See Mot.
14 Ex. 5 (“Notice”) at ¶ VI.) On April 23, 2010, Defendant Northwest Trustee Services, Inc.
15 (“NW Trustee Services”) recorded a Notice of Trustee’s Sale of Mr. Calabrese’s
16 property. (*Id.* at 1.) The Notice stated that NW Trustee Services would sell the property
17 at public auction on July 23, 2010. (*Id.* ¶ I.)

18 Mr. Calabrese states that on June 18, 2010, he served Defendants with a Dispute
19 of Debt pursuant to the Fair Credit Reporting Act, a Demand of Validation pursuant to
20 the Fair Debt Collection Practices Act, and a Qualified Written Request pursuant to the
21 Real Estate Settlement Procedures Act (“RESPA”). (Mot. at 4.) In response, according
22 to Mr. Calabrese, NW Trustee Services postponed its trustee’s sale to August 27, 2010.

1 (Id.) On August 20, 2010, Mr. Calabrese filed the instant motion for a temporary
 2 restraining order.¹ (Dkt. # 2.)

3 **II. ANALYSIS**

4 Nonjudicial foreclosures in Washington are governed by the Deed of Trust Act
 5 (“DTA”), chapter 61.24 RCW. *Cox v. Hellenius*, 693 P.2d 683, 685 (Wash. 1985); *see*
 6 *also Vawter v. Quality Loan Serv. Corp. of Wash.*, --- F. Supp. 2d ---, No. C09-1585JLR,
 7 2010 WL 1629355, at *3-5 (W.D. Wash. Apr. 22, 2010) (explaining the operation of the
 8 DTA). The procedure set forth in RCW 61.24.130 for restraining a trustee’s sale initiated
 9 pursuant to the DTA is “the only means by which a grantor may preclude a sale once
 10 foreclosure has begun with receipt of the notice of sale and foreclosure.” *Cox*, 693 P.2d
 11 at 686. Specifically, under RCW 61.24.130(1), a court must “require as a condition the
 12 granting of a restraining order or injunction that the applicant pay to the clerk of the court
 13 the sums that would be due on the obligation secured by the deed of trust if the deed of
 14 trust was not being foreclosed.” In addition, RCW 61.24.130(2) provides:

15 No court may grant a restraining order or injunction to restrain a trustee’s
 16 sale unless the person seeking the restraint gives five days notice to the
 17 trustee of the time when, place where, and the judge before whom the
 18 application for the restraining order or injunction is to be made. This notice
 shall include copies of all pleadings and related documents to be given to
 the judge. No judge may act upon such application unless it is
 accompanied by proof, evidenced by return of a sheriff, the sheriff’s

19 _____
 20 ¹ Mr. Calabrese filed an application to proceed in forma pauperis (“IFP”) in this case.
 21 (Dkt. # 1.) In a separate order, the court denied Mr. Calabrese’s application to proceed IFP
 22 because he did not meet the requirements for granting IFP status; accordingly, the court will not
 file Mr. Calabrese’s complaint until he pays the appropriate filing fee. Nevertheless, in light of
 the imminent trustee’s sale, the court addresses Mr. Calabrese’s motion for a temporary
 restraining order.

1 deputy, or by any person eighteen years of age or over who is competent to
2 be a witness, that the notice has been served on the trustee.

3 Here, Mr. Calabrese filed his motion for a temporary restraining order on August
4 20, 2010, and noted it for consideration by the court on the same day. Mr. Calabrese has
5 not, however, filed any proof that he has given five days notice of his motion to the
6 trustee, NW Trustee Services, as required by RCW 61.24.130(2). In addition, as the
7 trustee's sale is scheduled for Friday, August 27, 2010, it is now too late for Mr.
8 Calabrese to comply with the DTA's statutory procedure for restraining a trustee's sale.
9 Accordingly, the court must deny Mr. Calabrese's motion for a temporary restraining
10 order.

11 **III. CONCLUSION**

12 For the foregoing reasons, the court DENIES Mr. Calabrese's motion for a
13 temporary restraining order (Dkt. # 2).

14 Dated this 23rd day of August, 2010.

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17 JAMES L. ROBART
18 United States District Judge